

MICHAEL J. FABISIAK

IBLA 81-550

Decided October 6, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring the Apache #2 lode mining claim abandoned and void. CA MC 52931.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date.

APPEARANCES: Michael J. Fabisiak, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael J. Fabisiak has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated March 25, 1981,

declaring the Apache #2 lode mining claim, CA MC 52931, abandoned and void for failure to file timely either evidence of annual assessment work or a notice of intention to hold the claim on or before December 30, 1980, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claim was located on October 13, 1979, and filed for recordation with BLM on October 19, 1979. On January 2, 1981, BLM received proof of labor for the 1980 assessment year.

In his statement of reasons for appeal, appellant contends that "[b]efore going on vacation" he left the required document in his mail box "for the mailman to pick up, in what I thought would be plenty of time to reach you within the allotted time period." Appellant theorizes that the mail must have been "delayed" by the "heavy load on our postal service during the holiday season."

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), and the pertinent regulation, 43 CFR 3833.2-1(c), require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim. Failure to file the required instrument timely is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of the filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In the absence of evidence that BLM did receive timely either evidence of annual assessment work or a notice of intention to hold the claim, BLM properly declared the claim abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

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Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

